

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

**Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850
(240) 777-6600**

<http://www.montgomerycountymd.gov/content/council/boa/board.asp>

Case No. A-6012

PETITION OF ANN R. AND CHARLES M. MARMELSTEIN

(Hearing held September 1, 2004)

OPINION OF THE BOARD

(Effective date of Opinion, October 25, 2004)

This proceeding is a petition pursuant to Section 59-A-4.11(b) of the Zoning Ordinance (Chap. 59, Mont. Co. Code 1994, as amended) for a variance from Section 59-C-1.433(b). The petitioners propose to construct a one-story addition that requires a variance of eleven (11) feet as it is within fourteen (14) feet of the rear lot line. The required setback is twenty-five (25) feet.

Andrea Daniel, a general contractor, appeared with the petitioners at the public hearing.

The subject property is Lot 14, Block T, Potomac Commons Subdivision, located at 12701 North Commons Way, Potomac, Maryland, 20854, in the R-150 Zone (Tax Account No. 00140025).

Decision of the Board: Requested variance **denied**.

EVIDENCE PRESENTED TO THE BOARD

1. The petitioners propose to construction an 11.6 x 19 foot one-story addition/sunroom.
2. The petitioner testified that his property is a corner lot located at the intersection of North Commons Way and Falls Chapel Way. The petitioner testified that his lot has a narrow, shallow rear yard and that the all of the houses in the neighborhood sit back very far from the street, which results in large front yards and smaller backyards.
3. The petitioner testified that new construction can not be added in the side yards because of the covenants of the subdivision and that the proposed addition has received the approval of his homeowner's association. The petitioner testified that the new construction would be screened by a fence and an existing tree.

FINDINGS OF THE BOARD

Based upon the petitioners' binding testimony and the evidence of record, the Board finds that the variance must be denied. The requested variance does not comply with the applicable standards and requirements set forth in Section 59-G-3.1(a) as follows:

(a) By reason of exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary situations or conditions peculiar to a specific parcel of property, the strict application of these regulations would result in peculiar or unusual practical difficulties to, or exceptional or undue hardship upon, the owner of such property.

The Board finds that the petitioners' lot has no exceptional topographical or other conditions peculiar to the property and that are not shared with the adjoining and neighboring properties. The Board further finds that the petitioners' lot is similar in size and shape to all of the lots along North Commons Way and Falls Chapel Way.

The Board notes that existing improvements to a property are not a zoning reason for the grant of a variance.

The petition does not meet the requirements of Section 59-G-1.3(a) and the Board did not consider the other requirements in that section for the grant of a variance. Accordingly, the requested variance of eleven (11) feet from the required twenty-five (25) foot rear lot line setback for the construction of a one-story addition/sunroom is denied.

The Board adopted the following Resolution:

Board member Donna L. Barron was necessarily absent and did not participate in this Resolution. On a motion by Louise L. Mayer, seconded by Angelo M. Caputo, with Allison Ishihara Fultz and Donald H. Spence, Jr., Chairman, in agreement, the Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the Opinion stated above is adopted as the Resolution required by law as its decision on the above entitled petition.

Allison Ishihara Fultz
Chairman, Montgomery County Board of Appeals

I do hereby certify that the foregoing
Opinion was officially entered in the
Opinion Book of the County Board of
Appeals this 25th day of October, 2004.

Katherine Freeman
Executive Secretary to the Board

NOTE:

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date of the Opinion is mailed and entered in the Opinion Book (see Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.